

H. J. RODABAUGH

IBLA 82-17

Decided October 30, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. I MC 39689.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Mrs. Bonnie Mays, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal on behalf of H. J. Rodabaugh has been taken from the September 25, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Queen of the Mountain lode mining claim abandoned and void because no evidence of assessment work or a notice of intention to hold the claim was filed during calendar year 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The appeal states that Rodabaugh was seriously injured in a hit and run accident on July 2, 1980, and was unable to perform any activities. As a consequence, the proof of labor for the Queen of the Mountain claim was not recorded with BLM in 1980. Mrs. Mays stated

that she was appointed guardian for Rodabaugh in October 1980. She filed the assessment work for the year 1981 with BLM on August 28, 1981.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented lode or placer mining claim on public land shall file a notice of intention to hold the claim or an affidavit of assessment work performed on or for the claim on or before December 30 of each year in the proper BLM office. The section further provides that failure to file the required instruments timely shall be conclusively deemed to constitute an abandonment of the unpatented mining claim. The statutory requirements are restated in 43 CFR 3833.2-1 and 3833.4(a).

As the document, required by statute, was not filed with BLM during the prescribed time period, such failure justifies the determination by BLM that the mining claim is abandoned and void. Susan Mativo, 52 IBLA 134 (1981). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). This Board has no authority to waive failure to comply with the statutory requirements, nor allay the statutory consequences, regardless of the unfortunate circumstances of this appeal. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM about the possibility of relocating this mining claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

